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STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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In the Matter of
Applications 16976 and 16977
by Whiskey Creek Lodge

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} Source: Whiskey Creek
} County: Shasta
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Decision No. D882

Decided: January 15, 1958

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Appearances at hearing conducted at Redding on November 7,
1957, by John B. Evans, Member, State Water Rights Board:

For the Applicant:

Whiskey Creek Lodge

Laurence W. Carr, attorney

For the Protestant:

Dorothy Herman

R. P. Stimmel, attorney

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DECISION

Substance of the Applications

Application 16976 is for a permit to appropriate 2.5 cubic feet per second, year-round, of unappropriated water from Whiskey Creek, tributary to Sacramento River via Clear Creek, in Shasta County, for power purposes. Water is to be diverted at a point within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 29, T33N, R6W, MDB&M, by means of an earth dam 23 feet in height and 30 feet long. An

8-inch steel pipe 1,000 feet in length will convey the water by gravity from the dam to a power plant within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 29, T33N, R6W, MDB&M. The water will be returned to Whiskey Creek at a point within the same 40-acre subdivision. The total fall from the dam to the power plant is 60 feet and it is anticipated that the installation will develop approximately 17.7 theoretical horsepower. The power is to be used at a lodge and at six summer homes.

Application 16977 is for a permit to appropriate 0.5 cubic foot per second, year-round, of unappropriated water from Whiskey Creek for irrigation and domestic purposes. The water is to be diverted at the same point and by means of the same diversion dam as that contemplated under Application 16976. The conduit system will include an earth ditch extending 1500 feet from the dam followed by 60 feet of 2-inch pipe. Irrigation is contemplated upon 40 acres of pasture and orchard within the S $\frac{1}{2}$ of Section 29, T33N, R6W, MDB&M, and water is to be used for domestic purposes at the lodge and summer homes mentioned in the preceding paragraph.

Protest

Dorothy Herman claims a right to the use of water from Whiskey Creek by virtue of use begun by her predecessors in interest prior to December 19, 1914, and by a judgment recorded on February 11, 1919, in Book 135, page 284, Official Records of Shasta County. The protestant claims that approval of the applications will deprive her of a water supply and will destroy the value of her land. According to the protest, water has been used

on protestant's property since prior to February 24, 1894; that her right extends to 150 miner's inches; that the entire flow of Whiskey Creek is needed from May 1 to January 1, depending upon climatic conditions; and that water is used year-round for domestic, household, hotel, motel, and stockwatering purposes.

Answer to Protest

The applicant states that it recognizes the existence of the protestant's water right and is willing to enter into an agreement whereby the quantity of water actually being used and that has been used by the protestant will be maintained. However, the applicant contends that its proposed use of Whiskey Creek will not diminish the flow of the stream; that the flow over and above that actually used by the protestant is unappropriated; and

"That notwithstanding the specification of an old water right conveyed by mean conveyances to the said Dorothy Herman that said Dorothy Herman has not used the quantity of water set forth therein and applicant requests that the amount of use by said Dorothy Herman be determined and the water right of Dorothy Herman established according to use."

Hearing Held

Applications 16976 and 16977 were completed in accordance with the provisions of the Water Code and applicable administrative rules and regulations of the State Water Rights Board (hereinafter referred to as the "Board") and were set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, before the Board on Thursday, November 7, 1957, at ten o'clock a.m., in Redding, California. The applicant and protestant were duly notified of the hearing.

Source

Whiskey Creek rises on the easterly slopes of the Trinity Mountains at an elevation of about 3600 feet and flows in a southerly direction about seven miles to Clear Creek, a tributary of Sacramento River from the west. The applicant's proposed point of diversion is located about three miles upstream from the protestant's point of diversion and about four miles upstream from the confluence of Whiskey Creek and Clear Creek. According to the report of field investigation of July 9, 1957, by an engineer of the Board (Staff Exh. 7), the watershed is steep and rough, has a medium to moderately heavy covering of brush and timber and a drainage area above the points of diversion of applicant and protestant of about 4.5 and 12 square miles, respectively.

Protestant's Project

Protestant Herman diverts from Whiskey Creek at a point about one mile north of Whiskeytown (Whiskeytown is located north of Clear Creek and west of Whiskey Creek near the confluence of these streams) by means of a concrete dam approximately 10 feet high and 50 feet long. The water is diverted into a timber flume (not over 100 feet long) heading near the right abutment of the dam and empties into the Woodward Ditch through which the water is conveyed along the west side of the canyon to Whiskeytown. The capacity of the ditch system as presently constructed is 1.5 cubic feet per second (Staff Exh. 7). August Herman, husband of protestant, testified that (R.T. pp. 33, 34) the Woodward Ditch is the only conduit used by the protestant, that the diversion dam and

ditch system are now in the same general condition as they have existed for the last six or seven years.

Present use of water at Whiskeytown directly or indirectly from the protestant's ditch supply includes the domestic requirements of about 75 persons, 25 houses, a service station, store, and bar, and the irrigation requirements totaling approximately one acre of fruit trees and gardens (Staff Exh. 7). The excess or unused water reaching the end of the ditch is returned either to Whiskey Creek or is discharged into Clear Creek (R.T. p. 43).

Water Supply

Hydrological data for the general area and particularly for Whiskey Creek are sparse, and hearing testimony regarding this subject is not conclusive. According to testimony, the flow of Whiskey Creek originates, at least in part, from springs in the headwaters and in the tributary creeks; however, the runoff depends greatly on the amount of precipitation received during the winter and spring months (R.T. pp. 81-87). Although the months of August and September are the critical low flow period (R.T. pp. 40, 79, 84, 91, 92), according to John Roberts, a witness for the protestant and a resident of Whiskeytown for about 65 years, only on rare occasions is the Woodward Ditch supply inadequate for all the needs of the users (R.T. p. 103). According to the recollection of some of the witnesses the flow of the creek ceased entirely on several occasions (1924, 1927 or 1928 and 1948 and possibly one or two other years), (R.T. pp. 50, 60, 79, 92 161)

feet per square mile, with maximum and minimum seasonal runoff for the same period estimated at 3,390 and 173 acre-feet per square mile, respectively. The same table shows that the average monthly distribution of runoff will vary from 20.3 per cent in March to 1.4 per cent in September. Assuming that runoff of Clear Creek Watershed is representative of that occurring on Whiskey Creek, on the basis of Bulletin No. 5 estimates, the unimpaired flow at the protestant's point of diversion during a year of normal runoff will average 3.3 cubic feet per second during September, the month of lowest flow. For a year of minimum expected runoff, the flow in cubic feet per second at the same point will average 1.6 in June, 0.7 in July and October, 0.5 in August and September, and 1.7 in November.

On July 9, 1957, the flow at the protestant's point of diversion was measured to be approximately 4.8 cubic feet per second and at the applicant's point of diversion some three miles upstream the flow was measured to be approximately 1.5 cubic feet per second (Staff Exh. 7).

Discussion

Under existing conditions, diversion of water from Whiskey Creek into the Woodward Ditch is limited to a maximum of 1.5 cubic feet per second, the capacity of the ditch intake. As the record is silent as to any other use of water from the creek under a valid claim of right, the Board must conclude that any flow in excess of the requirements of the Woodward Ditch users, not to exceed 1.5 cubic feet per second, is subject to appropriation under Application 16976 and 16977.

The testimony indicates that from the beginning of the fall rains until about the middle of July, the flow is usually in excess of protestant's needs. During the remaining portions of the year, and particularly during the months of August and September, the evidence is not entirely conclusive either as to the adequacy or inadequacy of a water supply. During 1957, a year of average or slightly less than average streamflow, the flow of Whiskey Creek at protestant's point of diversion decreased from a measured 4.8 cubic feet per second, over three times the capacity of the Woodward Ditch on July 9, to a flow of about one-half capacity of the ditch in September. During a portion of 5 of the past 34 years, the flow ceased entirely.

Based upon the data contained in the aforementioned Bulletin No. 5, the estimated flow of Whiskey Creek at the protestant's point of diversion will be considerably more than the capacity of her ditch during every month of a year of average runoff. During a year of minimum expected runoff, the flow will be inadequate during the months of July, August, September, and October, and the flow will be only slightly in excess of the capacity of her ditch during June and November.

Conclusions

The evidence points to the conclusion that unappropriated water usually exists in Whiskey Creek, that the intended uses proposed under Applications 16976 and 16977 are beneficial and that said applications may be approved, if appropriately conditioned, without injury to any lawful user of water.

ORDER

Applications 16976 and 16977 for permits to appropriate unappropriated water having been filed, a protest having been submitted, a hearing having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 16976 and 16977 be, and the same are hereby approved, and it is ordered that permits be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated under the permit issued pursuant to Application 16976 shall be limited to the amount which can be beneficially used for power purposes and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year.

2. The amount of water appropriated under the permit issued pursuant to Application 16977 shall be limited to the amount which can be beneficially used and shall not exceed 0.5 cubic foot per second to be diverted from (a) about April 1 to October 1 of each year for irrigation purposes and (b) throughout the year as required for domestic purposes.

3. Water shall be diverted under the permit issued pursuant to Application 16977 only during such times and to the extent that surface flow of Whiskey Creek is passing the diversion dam on said creek at the head

of Woodward Ditch or that the flow in the intake of said ditch exceeds 1.5 cubic feet per second.

The equivalent of such continuous flow allowance for any thirty day period may be diverted under the permit issued pursuant to Application 16977 in a shorter time if there be no interference with vested rights.

4. The maximum amount herein stated may be reduced in the license if investigation so warrants.

5. Actual construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permits may be revoked.

6. Said construction work shall be completed on or before December 1, 1960.

7. Complete application of the water to the proposed uses shall be made on or before December 1, 1961.

8. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until licenses are issued.

9. All rights and privileges under these permits including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Oakland, California, on this 15th day of January, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ John B. Evans

John B. Evans, Member

/s/ W. P. Rowe

W. P. Rowe, Member